IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 31 OF 2007

Mr. Premji N. Patel (HUF). ... Petitioner.

V/s.

M/s. ATCO Mart Ltd. ... Respondent.

....

Mr. Naresh Fadia for the Petitioner.
None for the Respondent.

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CORAM : DR. D.Y.CHANDRACHUD,J.

12th April 2007.

P.C. :

. The Company Petition is based on the supply by the Petitioner to the Respondent of various items of stationery including visiting cards and envelopes together with printing work carried out by the Petitioner. The claim is in the amount of Rs.3,58,436/-. The invoices are for the period 2nd February 2006 till 24th April 2006. Annexed to the Petition are copies of the purchase orders, the invoices and delivery challans duly receipted by the Company. In reply to the statutory notice dated 12th August 2006, the Company by its letter dated 20th September 2006 stated that :

(i) The invoices claimed inflated amounts from the Respondent;

(ii) The Petitioner had supplied inferior quality material and had not applied the standards approved by the Company;

(iii) The quantity supplied was in excess of what was ordered.

The fact that goods were sold, supplied and delivered has not been disputed. The defence cannot prima facie be accepted since no dispute in regard to the price, quality or quantity of the goods supplied was raised immediately after the goods were supplied during the period from February to April 2006. The goods supplied were accepted without demur.

2 In reply to the Company Petition, an affidavit has been filed in which once again the defence is that the goods were "found to be of inferior

quality" and not in accordance with the order placed. It is also claimed that the rates were ‘higher’. However, the fact remains that no such dispute was raised, at the material time when goods were supplied and accepted. Though, according to the Company, a letter was addressed to the Petitioner, the date of the letter has not been mentioned in the reply nor for that matter has a copy of the letter been annexed to the reply. The defence therefore is vague and is prima facie only an after thought. It has been alleged that one Shri Ashok Bhagat who was working as a Media Manager of the Company left service in October 2006, and the bills were prepared in collusion with the aforesaid officer. Significantly, no such defence was taken in the reply to the statutory notice. That defence is therefore only an attempt to avoid the payment of dues.

3 However, with a view to furnish an opportunity to the Respondent to avoid the consequences of the admission of a Petition for winding up, it would be appropriate to pass a conditional order.

4 Hence, the following order :-

(i) The Respondent shall within a period of 4 weeks from today deposit an amount of Rs.3.58 lakhs with the Prothonotary and Senior Master and furnish an intimation of such deposit to the learned Advocate for the Petitioner;

(ii) Within a period of 3 months from the date of intimation in clause (i), the Petitioner would be at liberty to institute a suit for the recovery of its dues. Thereupon, the amount deposited shall lie to the credit of the suit and abide by such decree as is passed therein. In the meantime, the amount shall be invested by the Prothonotary and Senior Master in a fixed deposit of a Nationalised Bank to be renewed periodically subject to such orders as may be passed by the Court in the suit;

(iii) In the event that th Respondent fails to deposit the amount within the period stipulated, the Company Petition shall stand admitted and be liable to be advertised in 'Free Press Journal', 'Nav Shakti' and in the Maharashtra Government Gazette. The Petitioner to deposit Rs.10,000/- with the Prothonotary and Senior Master towards publication charges within three weeks of the Petition standing admitted with intimation to the Company Registrar failing which the Petition shall stand dismissed without further reference to the Court;

(iv) If the Petitioner fails to institute a suit within a period of 3 months as stipulated in clause (ii), it would be open to the Respondent to approach this Court for discharge of the security.